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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,263	02/25/2002	Vincent P. Vaccarelli	D/A2038	4221

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EXAMINER

KRAMER, JAMES A

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/083,263

Applicant(s)

VACCARELLI ET AL.

Examiner

James A. Kramer

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MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-9 & 19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Specifically, claim 1 includes "at least one problem solver". Applicant discloses on page 6, that a problem solver is a human, which is non-statutory subject matter. Applicant cannot claim a human being.

Claims 10 – 18 & 20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 10-18 only recite an abstract idea. The recited steps of merely sending a query, receiving a response, analyzing the response, transmitting a solution and sending a query do not apply, involve, use, or advance the technological arts since all of the

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recited steps can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute an idea of how ensure customer satisfaction.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention produces solutions to customers' problems (i.e., useful and tangible). Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, the claims are deemed to be directed to non-statutory subject matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 as interpreted by the Examiner are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakakibara et al in US Patent Number 6,564,227 (hereinafter '227) in view of Admitted Prior Art.

'227 teaches a customer support system in which a customer support center collects usage information and quality information on a customer device. The customer support center stores part or all of the information and uses the information for supporting the customer (column 4; line 61 – column 5; line 3).

'227 further teaches that the customer support center remotely sets data which the customer device should transmit or the time at which the device should transmit (column 9; lines

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34-36). Examiner notes that this feature represents automatically querying the customer at a predetermined time as to problems with goods. The data sent from the device represents receiving information from a customer to the query.

‘227 also teaches when receiving fault information, the customer support center reports the matter to customer information system in charge of maintenance and/or management of the customer device (column 2; lines 31-34). Examiner notes this represents analyzing the response received from the customer, determining that a problem exists and transmitting to a problem solver.

‘227 teaches the customer information system in charge of maintenance after confirming that a problem exists provides instructions for repair or manages progress of the state from the reception of the problem to restoration (e.g. column 4; lines 10-20). Examiner notes that this represents transmitting a solution to the customer.

‘227 does not teach sending a query to the user requesting verification that the problem has been solved. Examiner took Official Notice in the Office Action mailed 12/23/03 that it is old and well known in the art to send “follow-up” queries to customers in order to verify that the work performed was done to the customer’s satisfaction. This old and well-know Official Notice statement is being treated as admitted prior art as it was not traversed by Applicant. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of ‘227 to schedule an additional query right after a fault has been handled in order to verify that the problem has been resolved to the customer’s satisfaction.

‘227 does not specifically mention querying the customer once a week or once a month. Examiner took Official Notice in the Office Action mailed on 12/23/03 that regular querying is

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old and well known in order to continuously monitor a customer's status. This old and well-know Official Notice statement is being treated as admitted prior art as it was not traversed by Applicant. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the customer support center of '227 to remotely sets date for querying to once a month or once a week to continuously monitor the status of the customer device.

Response to Arguments

Applicant's arguments filed 3/8/04 have been fully considered but they are not persuasive.

Applicant asserts that page 5 of the specification, lines 1-2 discloses that each element of Claim one may be implemented using software. This is incorrect. In fact page 5 lines 1-5 state: "The customer satisfaction system may be implemented using standard helpdesk type software, uniquely modified to periodically contact product or service users, gather, record and route problems immediately to designated problem solvers, register their commitment to a solution date, confirm their solution date on that data and then verify solution with the user reporting the problem". As clearly stated by Applicant the software merely routes the problem to the problem solver, this is not the same as the problem solver being a software package.

In addition, Applicant distinctly claims in Claim 1, a problem solver for generating solutions. One of ordinary skill in the art would not recognize "standard helpdesk type software" as being capable of generating solutions. On the contrary, standard helpdesk type software is used as Applicant discloses for routing problems to problem solvers and then verifying the completion.

Examiner further points to page 6 of the specification, lines 12-21. Specifically, where Applicant teaches that the problem solver must enter a login name and password and where the problem solver must click “ok”. One of ordinary skill in the art would recognize these tasks as done by a human.

Finally, reading the claim in the light of the specification, the limitation of a problem solver is clearly a human being and as such the rejection of claims 1-9 under 35 U.S.C. 101 is maintained.

Applicant asserts that claims 10-18 are directed to statutory matter. Applicant supports this position on the basis that “the inclusion in a patent of a process that may be performed by a person, but that also is capable of being performed by a machine, is not fatal to patentability.” While this statement from the Federal Circuit is accurate it does not pertain to matters at hand in this case.

Specifically, Applicant does not just “include a process that may be performed by a person”. Applicant’s entire invention may be performed by a person. In other words, Applicant’s lack of any technology in the claims renders them non-statutory. In further support of this position, Applicant need not include technology in every limitation/process of the claims. Merely adding the use of technology to one of the limitations/processes would render the claims statutory.

Applicant asserts that Sakakibara only teaches interaction with a device or product and that this is different from a customer. Examiner disagrees and asserts that interacting with the device is the same and produces the same result as interaction with the customer. This assertion also supports the obvious statement made by examiner. As it would be obvious for the system of

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Sakakibara to query the customer/device in order to determine if the problem is solved. In fact Applicant admits that the system could monitor/query the device to determine when/if it is working properly.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Kramer whose telephone number is (703) 305-5241. The examiner can normally be reached on Monday - Friday (8AM - 5PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (703) 305-4716. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James A. Kramer
Examiner
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JAK


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